but some time before the Government's case rests. That is your point.

Mr. Fennelly: That is all.

The Court: I will reserve decision on that matter. I would like to go back and review the testimony as it appears in the transcript.

Mr. MacMahon: Your Honor, may I add that the Government would expect to have its case in by Tuesday or Wednesday of next week and, therefore, this is something I think we have to come to a quick decision about.

The Court: I won't take very long. But I would like to read what happened before I pass on it.

You represent now that you think you will be finished by next Tuesday or Wednesday?

Mr. MacMahon: That is my hope. I say Wednesday.

The Court: That will be the first time in history that a trial lawyer overestimated his time; (1521) when we talked about it a week ago I think you anticipated then that it would be three weeks.

Mr. MacMahon: Mr. Fennelly's cross-examinations have been shorter than they had been earlier in the trial.

The Court: Well, the compliments are going all around, and everybody is happy.

Mr. MacMahon: I may prove to be badly in error on that estimate, your Honor.

The Court: Now, that is par. All right.

Now that we are at it, are you able to estimate, Mr. Fennelly, in the event that any motions that might be made at the end of the Government's case either were not decided promptly or were decided adversely, have you any idea, and if you decide to put in a defense, have you any idea how long that would run?

Colloquy

Mr. Fennelly: No, I have not reviewed the matter which I am—I started to do.

The Court: Very well.

Mr. Fennelly: And I could not possibly tell you at the moment.

The Court: That is all right.

All right. Then let us get the jury in.

(Jury in box.)

The Court: Good morning, ladies and gentlemen.

(1522) Mr. Christy: Your Honor, before the Government calls if first witness may I make one correction to the record.

Yesterday, at the close of Mr. Dershansky's testimony, at page 1491, he had referred to two exhibits which were already in evidence, Nos. 58 and 60, which consisted of seven checks, and I stated for the record that the total of those checks was $377.90.

The Court: Yes.

Mr. Christy: I made an arithmetical mistake on that. The total should be $347.93. The checks were already in evidence and, of course, would speak for themselves.

The Court: Yes. Now the correct amount is $347.92?

Mr. Christy: 93 cents, your Honor.

Mr. Fennelly: What witness?

Mr. Christy: That was Mr. Dershansky. It was at page 1491.

Mr. Fennelly: 1947?

Mr. Christy: No. 1949.

The Court: Very well. Thank you, Mr. Christy.

Mr. Christy: The Government calls Mr. Estelle Brown.

Estelle Brown—for Government—Direct

(1523) ESTELLE BROWN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mrs. Brown, where do you live? A. 99 Hamilton Place.

Q. New York City? A. Yes.

Q. Would you keep your voice up just a little so that the last man in the jury box may hear you? A. Yes.

Q. Where are you employed presently? A. Now I am working for Mr. and Mrs. Costello.

Q. That is, at 115 Central Park West? A. Yes, a very, very fine man.

Q. Do you see Frank Costello in this courtroom, Mrs. Brown? A. Yes.

Q. Will you point him out, please? A. Right over there, to my right (indicating).

Mr. Christy: May the record indicate that the witness has pointed out the defendant Frank Costello.

Q. Mrs. Brown, when did you first start to work for the Costellos? A. Memorial Day, 1937.

Q. And did you continue to work for them from 1937 through 1949? A. Yes.

The Court: '37 this is? 1937?

(1524) The Witness: Yes.

The Court: Thank you.

Q. Your employment was continuous, was it not? A. Yes.

Q. While you were in the Costellos' employ, did you live at their apartment? A. Yes.

Q. And during the time that you had been employed, 1937 to 1949, do your remember if there were two people working for the Costellos at all times? A. Myself and another girl.

Q. So there were two people? A. Yes.

Q. Now, Mrs. Brown, going back to 1937, do you remember how much you were paid when you first entered the Costellos' employ? A. My wages was $10 a week.

Q. $10 a week? A. Yes.

Q. And, do you remember, did you make $10 a week in 1938? A. I suppose, so yes.

Q. It didn't go down, did it? A. Oh, no.

Q. And do you remember for how long you made $10 a week, for how many years? A. I guess 1940, something like that.

Q. 1940. So for 1937, 1938, 1939 and 1940 you were making $10 a week. Do you remember how much you made in 1941? A. I think my salary began to increase at that time.

(1525) Q. And do you remember how much it went to? A. Well, near 12, I guess.

Q. And do you remember how much you were making in 1942? A. I think it continued that up until about—

Q. It was $12 a week in 1942? A. Yes.

Q. And how about 1943; did you get a raise? A. I got a raise during the years; I just don't remember just the exact dates or times.

Q. What would be your best recollection as to when you got a raise? A. Every year or so. I would have to put it that way.

Q. Now, I believe you said that you were making $12 a week in 1941 and 1942? A. Well, that is about how it was.

Q. Did you get a raise in 1943? A. Yes.

Q. How much were you making then? A. It went up to 15.

Q. $15. So you made $15 in 1943, is that correct, to the best of your recollection? A. Yes, as far as I can remember.

Q. And did you get a raise the following year? That would be 1944? A. I guess so.

Q. Do you remember how much you were raised? A. Well, I just can't remember.

Q. In 1943, I believe you said, you were making (1526) $15. Now, if you got a raise in 1944, do you remember how much you were raised to? A. I think it went up to 18 or 20, $20 I guess.

Q. 18 or 20? A. 18 or 20. I don't remember just the exact amount, but it was around that.

Q. Your best recollection would be about $20 in 1944? A. Yes, I should judge that.

Q. Did you get a raise in 1945? A. Yes.

Q. And how much did you go to then? A. I went up to 25 or 30, I think, at that time.

Q. $25 in 1945? A. I think it was 25.

Q. That is your best recollection? A. Yes. Or 30, something like that. I think 25. I don't know exactly. I can't remember just—

The Court: It was not less than 25, was it?

The Witness: No. 20 or 25.

Q. Your best recollection would be that it was $25, is that correct? A. (No answer.)

Q. That was in 1946, was it not? Do you remember? A. 1946? I think so.

Q. Did you get a raise in 1947? A. It gradually raised. I just can't remember. Working for people like him, you know, first they raised you, you accepted it, you appreciated it; you didn't keep track of it, (1527) just the amount, you know what I mean.

Q. Well, Mrs. Brown, in 1949, do you remember how much you were making? A. I think it went up, $40.

Q. It was $40 in 1949? A. Yes, it gradually went up to 40.

Q. So you would say that it increased from $25 a week in 1946 to $40 a week in 1949? A. Yes. That would be the best I can remember.

Q. Would your best recollection be that in 1948 you were making about $35 a week?

Mr. Fennelly: Just a minute. I object to the leading. I think the witness should be allowed to testify.

The Court: All right.

Do you remember what you were being paid in 1948?

The Witness: Well, it was $40 then, I think 1949 or 1948; I just can't remember the exact years, but I know—

The Court: Do you remember in '48 if you got more than you were getting the year before, in 1947?

The Witness: Yes.

The Court: You have told us that you were getting $25 a week in 1947, and then in 1949 you were (1528) getting $40 a week. Now, can you tell us what you were getting in that year in between? Was there a period when you were getting more than 25 and less than 40?

The Witness: Yes.

The Court: And how much were you getting in that period?

The Witness: One time I was getting 30, then it went up to 35, and then it went up to 40.

By Mr. Christy:

Q. I believe you said you were getting $25 in 1946? A. Uh huh.

Q. You said you went to $30? A. Yes.

Q. Would that be the following year? A. That probably would be in the following year.

Q. 1947? A. Yes.

Q. And you said that you went up to $35. Would that have been the following year, 1948? A. That is probably it.

Q. 1948? A. Uh huh.

Q. And then in 1949 you were getting $40? A. $40.

Q. How were you paid most of the time, Mrs. Brown? A. In cash.

Mr. Christy: I have no further questions, (1529) your Honor.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No.

Q. And have you ever worked before with anyone else other than the Costellos? A. Yes.

Q. And isn't it usual to be paid in cash? A. Yes.

Q. And wasn't it Mrs. Costello who paid you? A. Yes.

The Court: All right. Any further questions?

Mr. Fennelly: That is all.

Mr. Christy: Thank you very much, Mrs. Brown.

(Witness excused.)

Mr. Christy: The Government calls Mrs. Mary Branch.

Mary Branch—for Government—Direct

MARY BRANCH, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mrs. Branch, where do you live? A. 1919 Seventh Avenue.

Q. Would you keep your voice up just a little so the last man in the jury box may hear you, Mrs. Branch? (1530) A. Uh huh.

Q. Mrs. Branch, have you ever worked at the Costello residence? A. Yes, I did.

Q. Do you know Frank Costello? A. Yes, sir, I do.

Q. Do you see him in this courtroom? A. Yes. Here he is, over there (indicating).

Mr. Christy: May the record indicate that the witness has indicated the defendant Frank Costello?

The Court: Yes.

(To the witness) Just sit back and relax, madam. Don't get concerned about it, try and speak out loud enough so that the last gentleman in the jury and all of the gentlemen at the second table will be able to hear you.

Q. Mrs. Branch, do you remember when you first entered the Costellos' employ? A. The best I can remember was in '42, around in November.

Q. About November 1942? A. That is right.

Q. Did you live at the Costellos' residence while you were working for them? A. No, I didn't.

Q. Do you remember when you left their employ? A. Yes, I do. It was February 1948.

Q. February 1948? A. That is right.

Q. Did you work at their residence all during the (1531) year? A. Yes, sir, I did.

Q. Did you work for them continuously from November 1942 through February 1948 or to February 1948? A. That is right.

Q. Mrs. Branch, do you remember how much you were making when you first entered their employ? A. Yes, $12.

Q. $12 a week? A. That is right.

Q. Do you remember getting a raise? A. Yes, I do.

Q. When was that? A. I think it was '43.

Q. Do you remember approximately when? A. No. It must have been around somewhere in October.

Q. About October '43. How much were you raised to? A. 15.

Q. Did you get a raise the following year? A. I think I did.

Q. Do you remember how much you were raised to then? A. I think 25.

Q. About $25 a week?

The Court: Keep your voice up a little bit. 25, you say?

The Witness: Yes.

Q. Do you remember what part of 1944 that was? A. No, I don't.

Q. Would it have been towards the end of the year? (1532) A. I don't remember. I just know I got the raise in that year.

Q. In 1944? A. That is right.

Q. And it was to $25 a week? A. That is right.

Q. Did there come a time when you were raised to $30 a week? A. Yes, I was.

Q. Do you remember approximately when that was? A. Well, as well as I can remember, I think it was in '44—'43 or '44.

Q. In when? A. '44 or '43.

Mary Branch—for Government—Direct.

Q. You testified that you were raised to $25 in 1944, so it wouldn't have been '44. It would have been after that time, wouldn't it? A. Yes.

Q. Would you remember what year it was? Was it 1945? A. 1945, somewhere in there, but I know I got the raise in time.

Q. Would it be about the end of 1945? A. Somewhere around in October, I think.

Q. 1945? And you were raised to $30 a week? A. That is right.

Q. When you left in February 1948 do you remember how much you were making? A. I was making 35.

Q. Do you remember when you had gone—

Mr. Christy: Withdraw that question.

Q. Do you remember when you were raised from 30 (1533) to $35 a week? A. Yes, I think that was around in —around in October.

The Court: What year?

The Witness: Of '47.

Q. Of 1947? A. That is right.

Q. That was around four or five months before you left their employ? A. Yes, that is right.

Q. That was when you were raised from 30 to $35? A. That is right.

Q. Were you paid in cash, Mrs. Branch? A. Most of the time, yes.

Q. Did you sometimes get paid by check? A. Yes, whenever—

The Court: You said sometimes you got paid by check and then you said something after, "whenever."

The Witness: He said did I get paid in checks. I said, yes, whenever they wasn't home, when they went away.

The Court: I see.

Mr. Christy: I have no further questions, your Honor.

ss Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned indictment in this case? A. No, I didn't.

Q. And your salary while you were there was about 34) the same as Mrs. Brown's, wasn't it? A. Oh, I ss sb. I don't know what Mrs. Brown got.

Q. She had been employed there a little before you? Yes, for a while.

The Court: Any other questions?

Mr. Christy: No further questions.

Mr. Fennelly: One other thing. Excuse me.

Q. Mrs. Costello paid you, didn't she? A. That is right.

Mr. Christy: Thank you, Mrs. Branch.

The Court: You may go now.

(Witness excused.)

Mr. Christy: The Government calls Miss Marjorie Porter.

Marjorie Porter—for Government—Direct

MARJORIE PORTER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Miss Porter, where do you live? A. 1990 Seventh Avenue.

Q. Would you keep your voice up just a little so the last man in the jury box may hear you?

Miss Porter, were you ever employed at the Costello residence? A. Yes.

(1535) Q. At 115 Central Park West? A. Yes.

Q. Do you remember approximately when you first started work there? A. It was in October 1948 but I don't remember the date.

Q. But it was some time in the month of October 1948? A. Yes.

Q. Did you work for them in the year 1949 A. Yes.

Q. And you worked all through that year, is that correct? A. Yes.

Q. Did you work full time all through the year 1949? A. Yes.

Q. Miss Porter, do you remember how much you were paid when you first started working at the Costello residence? A. Well, I don't remember exactly but it was either 30 or 35.

Q. Between 30 and $35 A. Yes.

Q. And that was in October 1948? A. Yes.

Q. And do you remember how much you received in 1949 A. The same amount, I think. I am not sure but I think it was the same amount.

Q. It would be about 30 or $35? A. Yes.

Q. A week in the year 1949? A. Yes.

Q. And were you paid in cash, Miss Porter? A. Yes.

Marjorie Porter—for Government—Cross
Helen Spaer—for Government—Direct

(1536) Mr. Christy: No further questions.

Cross Examination by Mr. Fennelly:

Q. Mrs. Costello pay you A. Yes.

Q. And did you testify before the grand jury that returned the indictment in this case A. No, sir.

Mr. Christy: No further questions.

Thank you, Miss Porter.

The Witness: Can I go home now?

The Court: You may go.

Mr. Christy: You may go home.

(Witness excused.)

Mr. Christy: The Government calls Mrs. Helen Spaer.

Helen Spaer, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Miss Spaer, would you keep your voice up just a little so the last man in the jury box may hear you? A. Yes.

Q. Where do you live, Miss Spaer? A. 105 East 24.

Q. Were you at one time a masseuse, Miss Spaer? A. Yes.

(1537) Q. You were? A. Yes.

Q. Did you have a license for that occupation? A. Yes.

Q. Do you remember when you got the license? A. I think in 1942.

Helen Spaer—for Government—Cross

Q. Miss Spaer, did you ever perform any services for Mrs. Costello? A. Yes, I did.

Q. Do you remember where she lived? A. 115 Central Park West.

Q. Do you remember when you first went to see her? A. I think in 1948.

Q. 1948? Did you go there in 1949? A. Yes.

Q. Do you remember approximately how many times you went there in 1948? A. Probably 40 times.

The Court: 40?

The Witness: At least.

Q. At least 40 times. And how many times did you go there in 1949? A. I think it was the same.

Q. At least 40 times? A. Yes.

Q. How much were you paid each time you went there? A. $4.

Q. $4. That was in 1948? A. Yes.

Q. And in 1949. So you would have received a minimum of $160 in 1948, is that correct? A. That is right.

(1538) Q. And a minimum of $160 in 1949? A. That is right.

Q. That is correct? A. Yes.

Mr. Christy: No further questions.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, sir. It is the first time.

Q. Would you be sure that it was 40 times? A. Oh, I am sure.

Q. What? A. Yes, sir.

Q. Did you keep a record of it? A. Not exactly. It wasn't so much.

Q. How do you remember in 1954 that back in 1948 it was 40 times? A. How do I remember? I said that, I think, two years ago, in the first place. And then I used to go sometimes twice a week; in the summer I didn't go, and she was traveling a lot. Just I just approximated.

Q. You are guessing at it? A. Yes.

Mr. MacMahon: I move to strike out counsel's conclusion.

The Court: What?

Mr. MacMahon: I move to strike out counsel's conclusion from the record.

(1539) The Court: Oh, no, she answered. He said, "You are just guessing?" She said, "Yes."

Redirect Examination by Mr. Christy:

Q. But it is your best recollection, is it— A. Yes, my best recollection.

Q. —it was 40 times in each year? A. Yes, sir.

Mr. Christy: Thank you very much.

The Witness: May I go home?

The Court: Yes.

Mr. Christy: Yes.

(Witness excused.)

Mr. Christy: The Government calls Mr. Alfonso Fico.

Alfonso Fico—for Government—Direct

Alfonso Fico, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Fico, where do you live? A. 25 Avenue B, Port Washington.

Q. What is your occupation, sir? A. Tree service.

Q. You spray trees and take care of them? A. That is right.

Q. For people in and around Port Washington? A. That is right.

(1340) Q. Have you ever done any work at the Costello residence in Port Washington? A. I have.

Q. Do you remember where that is? A. Barkers Point Road.

Q. Do you keep records of the work that you do for your customers? A. That is right.

Q. Have you a record indicating work done for the Costello residence? A. That is right.

Q. May I have it, sir? A. (Handing paper to Mr. Christy).

Mr. Christy: Mark it.

(Marked Government's Exhibit 330 for identification.)

Mr. Christy: Your Honor, may we substitute photostats of the pages in Government's Exhibit 330 for identification or so much of the photostats as pertain to the work done for the Costellos?

The Court: Yes.

Mr. Christy: The pages in this book are unnumbered, so we will number them 330-A, B and C?

The Court: Yes.

Q. Mr. Fico, I show you Government's Exhibit 330 for identification and I ask you if that is a day book kept by you of work done for customers reflecting work done in 1947? A. That is right.

(1541) The Court: Just a minute. How many pages?

The Clerk: Three.

The Court: We needn't bother marking them. Just mark them 330-A, consisting of three pages.

(Marked Government's Exhibit 330-A for identification.)

Q. And this was the record kept by you, Mr. Fico? A. That is right.

Q. In the regular course of your business? A. Yes.

Mr. Christy: Your Honor, the Government offers Government's Exhibit 330-A for identification.

The Court: Yes, which consists of three pages taken from Exhibit 330 for identification.

Mr. Christy: Yes, sir, and I'll show Mr. Fennelly the original.

(A pause.)

Mr. Fennelly: I object to them as irrelevant and immaterial.

The Court: Overruled.

(Government's Exhibit 330-A for identification received in evidence.)

Q. Mr. Fico, from Government's Exhibit 330-A, the photostats of the pages of your day book, can you tell us

the total amount that was paid for work done at the Costello (1542) residence in the year 1947? 1947. A. $91.

Q. $91. Mr. Fico, did you also do other work for the Costellos? A. Yes.

Q. Do your remember when it was? A. 1949.

Q. 1949. Did you have a record of the work that you did for them? A. Right.

Q. In 1949 you knew how much was paid to you, did you not? A. $41.50.

Q. To what are you referring? A. Spray work?

Q. In 1949? A. That is right.

Q. Do you have a record of that? A. I haven't with me.

Q. You don't have it with you? A. No.

Q. Where did you get that figure $42.50 in 1949? A. In April 1949, $14; May 1949, $14.50; August, $13.

Q. Is that a notation you have made in Government's Exhibit 330 for identification? A. That is right.

Q. And was that notation in Government's Exhibit 330 for identification taken out of your 1949 day book? A. That is where I took it out of.

Q. That is $42.50 in 1949? A. $41.50.

Q. $41.50? A. That is right.

Q. $41.50 in 1949.

Mr. Christy: No further questions.

(1543) *Cross Examination by Mr. Fennelly:*

Q. Did you testify before the grand jury that returned the indictment in this case? A. No.

Q. Now, what are the items that make up the total of $91 in 1947? Will you show me your book? A. Yes, spraying at different times. Took care of the spray work on the trees. In April (indicating).

Q. That is April 4, $19? A. Right. May—

Q. How much? A. 31.

Q. Yes. A. And 17 (indicating).

Q. Yes. (A pause.) A. That 31 is carried—

Q. Just a minute. You are pointing out an item of $31 under April. A. No, excuse me.

Q. Isn't that just a carry-over? It was carried over, wasn't it? A. One time, 31.

Q. One time at 31? A. Yes.

Q. So you have $19, $31, $17, the total of which is $67 for 19—isn't that correct?

Mr. Christy: May I call the witness' attention to an entry which he seems to have overlooked?

The Court: You may.

Mr. Fennelly: Yes.

The Witness: Yes, I know there is $24.

(1544) Q. $24, but it is true that the item on the bottom—A. 31 was carried.

Q. —on that page that is simply a carry-over item? A. So there is once 31.

Mr. Fennelly: That is all.

The Court: What is the correct total now?

The Witness: $91.47.

The Court: 91. Very well.

Now, we will take our recess, if you have no further questions.

Mr. Christy: No further questions.

Thank you, Mr. Fico.

The Court: You may go.

(Witness excused.)

(Jury retires.)

(Short recess.)

Anthony J. Winkler—for Government—Direct

Mr. Christy: The Government calls Anthony Winkler.

ANTHONY JOSEPH WINKLER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Winkler, where do you live? A. Rahway, New Jersey.

(1545) Q. Where are you employed, sir? A. The Traffic Executive Association, Eastern Railroads, by the Trunk Line Central Passenger Committee of that association.

Q. Where is that located? A. 1 Park Avenue, New York City, New York.

Q. Are you the vice-chairman— A. I am.

Q. —of that association? A. Of the Trunk Line Central Passeng[illegible] Committee.

Q. That committee? A. Yes.

Q. Shorten it to committee. A. That is right.

Q. Are you familiar with the records kept by that committee? A. Yes, sir, I am.

Q. And will you tell us, briefly, what the committee does? A. Primarily, we handle traffic problems that are of mutual interest to our member lines, that is, the Eastern Railroads, and principally, one of those functions is the publication of passenger tariffs and sundry items such as tax, passenger transportation tax and items like that.

Q. And the preparation of tariffs or passenger fares, is that correct? A. That is right.

Q. Is your committee the lawfully appointed agent for the ICC to issue these tariffs? A. Yes, we are.

Q. And are the tariffs that you prepare the (1546) offi-

cial tariffs that are on file with the Interstate Commerce Commission? A. Yes, sir.

Q. At my request, Mr. Winkler, has your committee prepared a schedule from these official tariffs showing railroad fares to various places in the United States for the years 1937 through 1949? A. Yes, sir, we have.

Q. And was that schedule prepared under your supervision? A. Yes, sir.

Q. And have you got it, sir? A. Yes, sir, right here.

Q. May I have it? A. (Witness hands.)

(Marked Government's Exhibit 331 for identification.)

Mr. Christy: May the record indicate that Government's Exhibit 331 consists of eight typewritten sheets.

Q. Mr. Winkler, I show you Government's Exhibit 331 for identification and ask you if this is a schedule prepared by your committee of the various tariffs to points in the United States? A. Yes, sir.

Q. And does it cover the coach fares and first class fare for the period 1937 through 1949 from New York to Hollywood, Florida, one way and round trip, New York to Miami, Florida, one way and round trip, New York to New Orleans, Louisiana, one way and round trip (1547) and New York to Hot Springs, Arkansas, one way and round trip? A. Yes, sir.

Q. And it shows, does it not, the fares on various dates in that period, that is, 1937 to 1949, and also the dates on which the fares were changed? A. That is true.

Q. And does it also have the reference from the official publication from which these figures were taken? A. Yes, sir.

Anthony J. Winkler—for Government—Cross

Mr. Christy: Your Honor, the Government offers Government's Exhibit 331 for identification in evidence.

Your Honor, I have an additional copy of this which I will provide for Mr. Fennelly if he wishes it.

Mr. Fennelly: I object to it as irrelevant and immaterial.

The Court: Overruled.

(Government's Exhibit 331 for identification received in evidence.)

Mr. Christy: I have no further questions.

The Court: Very well.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, sir.

Q. Now, on the schedule that you have prepared, (1548) Exhibit 331, take the trip to Miami; what railroad is that supposed to be on? A. That would apply on any of the direct routes, sir.

Q. Now— A. We have not attempted to specify in this memorandum the routes that would be applicable, which could be obtained from the tariffs from which this memorandum was prepared.

Q. For example, isn't the fare different to Chicago via the Pennsylvania Railroad and the New York Central? A. No, sir.

Q. And how about from New York to Muncie, Indiana? A. That I couldn't answer, sir, without looking at the tariff.

Q. It was different in 1939 wasn't it? A. It wouldn't know, sir, without looking at the tariff.

The Court: Is that one of the tariffs that are listed in the exhibit?

Anthony J. Winkler—for Government—Cross

The Witness: Muncie, Indiana, would not be listed in that tariff, no, sir.

Q. Can you tell me whether or not it was different in 1937, whether you went via the Pennsylvania or the New York Central, going to Arkansas? A. In 1937?

Q. Yes. A. Not having the publication before me, I wouldn't want to guess. My general thinking is (1549) that they would be equal, but without specific reference to the tariff I couldn't answer your question affirmatively.

Q. How about in 1939? A. That would be true of any time, sir, without having the actual publication before me.

Q. What are these? A. These abbreviations?

Q. The abbreviation s-u-p? A. Supplement.

The Court: That refers to a source from which some figure was taken?

The Witness: Yes, it supplements the original tariff publication.

Q. Who is Agent C. M. Burt? A. He was the agent at that time, the—

Q. Agent for whom? A. The Eastern Railroads.

Q. That is the association that you are with? A. Yes, sir.

Q. And when you say first class fare, is that in a day Pullman with a chair? A. First class fare means that you have the option of occupying a parlor car or sleeping car on payment of the specific charges for the use of that parlor car seat or the Pullman.

Mr. Fennelly: That is all.

The Court: Very well.

Mr. Christy: Here is your copy (handing to (1550) Mr. Fennelly).

Anthony J. Winkler—for Government—Redirect
Henry Pellino—for Government—Direct

Redirect Examination by Mr. Christy:

Q. Mr. Winkler, these rates in this schedule, 331 in evidence, are the most direct routes? A. That is right.

Q. From place to place; right? A. Yes, sir.

Q. And therefore the minimum rates would apply? A. That is right, sir.

Mr. Christy: No further questions.
Thank you, Mr. Winkler.

(Witness excused.)

Mr. Seymour: The Government calls Henry Pellino.

HENRY PELLINO, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Seymour:

Q. Mr. Pellino, where do you live? A. 136 Waverly Place, New York City.

Q. What is your occupation, sir? A. Public accountant.

Q. Mr. Pellino, I show you Government's Exhibit 1, 1949 joint income tax return of Frank and Loretta Costello. I refer you to a schedule—

(1551) The Court: What is the exhibit number?
Mr. Seymour: Exhibit 1, your Honor.
The Court: Thank you.

Q. I refer you to a schedule attached to page 2 entitled, "Losses on oil and gas leases 1949," and I direct your

attention to "Three dry holes abandoned," listed on that schedule, with the following headings, "A well, Jones County, Texas," showing the amount of $2,666.63, "A well, Love County, Texas," showing amount of $3,691.63, and showing "A well, Schleicher County, Texas," in the amount of $5,115.12.

Do you know, sir, when those leases, those leasehold investments were acquired and when those payments were made? A. They were—these investments were made in the year 1949, at which time the leaseholds were also acquired.

Q. That is true for all three leases? A. Yes.

The Court: When was the date?

Mr. Seymour: In 1949, your Honor.

The Court: Thank you.

Mr. Seymour: I have no further questions.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, sir.

(1552) Mr. Fennelly: That is all.

(Witness excused.)

Mr. Christy: The Government calls Dr. Gervais McAuliffe.

G. W. McAuliffe—for Government—Direct

G. W. McAuliffe, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Dr. McAuliffe, where do you live? A. I don't—I didn't get that.

Q. Where do you live, sir? A. New York City.

Q. Whereabouts? A. At 205 East 69th.

Q. You are a medical doctor, sir? A. That is right.

Q. And what is your specialty? A. Ear, nose and throat.

Q. Where is your office located, sir? A. At 630 Park.

Q. Approximately how long have you been practicing, Dr. McAuliffe? A. About 30 years.

Q. Dr. McAuliffe, do you remember if you ever treated a Mrs. L. Costello? A. I do.

Q. And have you a record referring to the payments by her for services rendered by you? A. I do.

(1553) Q. May I have it, sir? A. (Witness hands.)

(Marked Government's Exhibit 332 for identification.)

Q. Dr. McAuliffe, I show you Government's Exhibit 332 for identification and ask you if that is a record kept by your office in the regular course of its business for the account of a Mrs. L. Costello? A. That is correct.

Q. And is the first date on there 1947? A. That is correct.

Q. And, in fact, all of the payments recorded on that sheet are in 1947, is that correct? A. That is correct.

Q. There is no address on that Exhibit 332 for identification, is there, Doctor? A. No, there isn't.

Q. Now, Dr. McAuliffe, I show you Government's Exhibit 234 in evidence which is a ledger sheet of the New York Hospital reflecting— A. 1945.

Q. —reflecting an account for Mrs. Loretta Costello of 115 Central Park West? A. That is right.

Q. And the name Dr. McAuliffe appears in the upper left. Is that you, sir? A. That is correct.

Q. And the Mrs. Costello recorded on this exhibit, Government's Exhibit 234 in evidence, is that the same (1554) identification? A. That is the same person, yes.

Mr. Christy: Your Honor, the Government offers Government's Exhibit 332 for identification in evidence.

Mr. Fennelly: I object to it as irrelevant and immaterial.

The Court: Overruled.

(Government's Exhibit 332 for identification received in evidence.)

Mr. Christy: May we substitute a photostat?

The Court: You may.

Q. Dr. McAuliffe, I again call your attention to Government's Exhibit 234 in evidence, which is the ledger card of the New York Hospital and reflects entries in 1945. Did you treat Mrs. Costello in that year? A. I did so.

Q. Was a search made through your office for the records pertaining to the services you rendered to her in that year? A. There was.

Q. Were you able to find such records? A. I was not, because of the fact that the office was moved and a lot of the records were destroyed.

Q. Referring again to Government's Exhibit 332 in evidence, can you tell me the total amount that was paid in the year 1947 to you by Mrs. Costello? (1555) A. This is in 1947.

Q. Yes. A. Approximately $160.

G. W. McAuliffe—for Government—Cross
Vincent J. Panettiere—for Government—Direct

The Court: What year?
The Witness: 1947.
Mr. Christy: 1947.

Q. That is $160 in 1947? A. That is right.

Mr. Christy: No further questions.

Cross Examination by Mr. Fennelly:

Q. Doctor, did you testify before the grand jury that returned the indictment in this case? A. I did not, no.
Q. And I take it your patient recovered? A. Pardon?
Q. I take it your patient recovered? A. (No answer.)

Mr. Christy: Thank you, Doctor.

(Witness excused.)

Mr. Christy: The Government calls Dr. Vincent Panettiere.

VINCENT JOSEPH PANETTIERE, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Dr. Panettiere, where do you live? (1556) A. 34-51 89th Street, Jackson Heights.
Q. You are a medical doctor, are you, sir? A. That is right.
Q. What field do you practice in? A. Ear, nose and throat.

Q. Where are your offices, Doctor? A. Well, I have an office at 34-51 89th Street, Jackson Heights, and I take care of the practice of Dr. John M. Lore, 325 West End Avenue.

Q. Will you keep your voice up just a little, Doctor, so the last man in the jury box may hear you?

Were you associated with the late Dr. Lore? A. Yes, since 1937.

Q. When did Dr. Dore die? A. January 1950.

Q. And you shared offices with him, sir? A. Well, I worked as his assistant in his office.

Q. And did you occasionally treat his patients? A. When he was away on vacations.

Q. Were you familiar with the records kept by Dr. Lore of payments made by his patients? A. I was familiar with the method, yes.

Q. And those records are still in Dr. Lore's office, are they not? A. Yes, they are.

Q. And have you brought here—withdraw that question.

(1557) Do you know if Dr. Lore ever treated Frank and Mrs. Loretta Costello? A. Yes, I do.

Q. And did he keep records of the payments by them? A. Yes, there are records.

Q. Do you have those records with you, sir? A. The records of the payments, yes.

The Court: Mark them 333 as one exhibit, consisting of two cards.

(Marked Government's Exhibit 333 for identification.)

Q. Dr. Panettiere, I show you Government's Exhibit 333 for identification and I ask you if those are the records kept by the late Dr. Lore— A. They are.

Q. —of the payments by Frank and Mrs. Loretta Costello? A. Yes, they are.

Q. And they show the date of payment on them, do they not? A. Yes, they do.

Q. And you have prepared a schedule from these cards showing the payments, have you not? A. Yes, I have.

Q. From Government's Exhibit 333 for identification you have prepared a schedule of the payments? A. Yes, I have.

Q. Can you tell me how much was paid in 1940?

(1558) Mr. Fennelly: I object to this, your Honor, unless we see these cards.

Mr. Christy: May I approach the bench a minute?

The Court: Yes.

(Side bar discussion out of hearing of the jury; Mr. Christy and Mr. Fennelly present.)

Mr. Christy: May the record note I have handed Mr. Fennelly Government's Exhibit 333 for identification?

The Court: Yes.

(A pause.)

Mr. Fennelly: I object to the payments of Mrs. as irrelevant and immaterial.

The Court: Overruled.

Q. Dr. Panettiere, can you tell us how much was paid in 1940? A. Total for 1940 was $25.

Q. 1942, sir? A. Total for 1942 was $190.

Q. 1944? A. 1944 was paid in 1945.

Q. In 1945? A. 1945, total is $30.

Q. And 1946? A. 1946, $10.

Q. 1947? A. '47 totaled $160.

Q. In 1949 how much did Frank Costello pay? A. 1949, Mr. Costello paid $65 for himself.

Q. And in 1949 how much did Mrs. Costello pay? (1559) A. 55.

Q. 55? A. Right.

Mr. Christy: May we substitute the schedule which Dr. Panettiere has prepared for this exhibit?

The Court: If you think you need it. You have the testimony in now.

Mr. Christy: Very well. I will withdraw the offer.

The Court: If you want to substitute the schedule, I will permit you to do so.

Mr. Christy: No, I will withdraw it.

The Court: I don't think you need to clutter the record with anything further.

Mr. Christy: No further questions.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. I didn't quite understand.

The Court: Were you called before a body which you have heard about what a grand jury is, that is, a body of citizens that listen to testimony and determine whether or not they will return an indictment. You never have been before any such body?

The Witness: No.

(1560) Q. Doctor, in 1940, was that for Mrs. Costello? A. Mrs. Costello was not treated until 1949, the first time.

Q. 1949 for the first time? A. Yes, 9 21/49.

The Court: Any other questions?

Mr. Fennelly: That is all.

Mr. Christy: Thank you, Dr. Panettiere.

The Witness: How about this (indicating).

The Clerk: May I have that so I may mark it? It is marked Government's Exhibit 333 in evidence.

The Court: No, it is not. It is just marked for identification. It is not in evidence. The doctor is going to take it back.

(Witness excused.)

Mr. Christy: The Government calls John T. McCaffery.

JOHN T. MCCAFFERY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. McCaffery, where do you live? A. 19 Stuyvesant Oval, New York City.

Q. Where are you employed, sir? A. A. Sulka & Company.

(1561) Q. Where is that located? A. 661 Fifth Avenue.

Q. How long have you been with Sulka, Mr. McCaffery? A. Five years.

Q. In what business is Sulka Company? A. We are haberdashers and makers of custom merchandise, such as shirts, robes, pajamas, house suits. Oh, I would say any item of men's apparel with the exception of outer garments, such as suits, overcoats or topcoats.

Q. Are you the credit manager of Sulka, sir? A. Yes, I am.

Q. You are familiar with and have access to the records, do you? A. Yes, I have.

Q. Did Frank Costello carry an account at Sulka? A. Yes, we have an account for him.

Q. And did he occasionally order materials made for him? A. Yes, that is right.

Q. Do you have records of those, Mr. McCaffery? A. Yes, I have.

(Marked Government's Exhibit 334 for identification.)

Mr. Christy: May the record indicate that Government's Exhibit 334 for identification consists of 12 sheets.

Q. Mr. McCaffery, I show you Government's Exhibit (1562) 334 for identification and ask you if those are order blanks or order forms for materials. A. Yes, they are order—an order form for a shirt to be made to the—

Q. In general— A. Yes.

Q. (Continuing) —are they order forms for the account of Frank Costello? A. That is correct.

Q. Or Mrs. Loretta Costello? A. That is correct.

Q. And does the date appear on each one of those sheets? A. Yes, the date does appear.

Q. And the amount of the charge, is that correct? A. That is correct.

Q. And is the date on the first sheet July 1, 1942, and on the last sheet November 1949? A. Yes, those dates are correct.

Q. And the other ten sheets are dates in between those two which you have given us, is that correct? A. I would like to look at that, if I may.

Q. That is, between '42 and '49. A. I just want to make sure of the chronological order.

Q. (Handing papers to witness). A. That is correct.

Mr. Christy: Your Honor, the Government offers (1563) Government's Exhibit 334.

(A pause)

Mr. Fennelly: Those of Mr. Costello I have no objection to. Those of Mrs. Costello I object to as irrelevant and immaterial.

The Court: Overruled.

(Marked Government's Exhibit 334 in evidence.)

Q. Mr. McCaffery, did you have two accounts at Sulka's, one for Mr. Costello and one for Mrs. Costello? A. We had two ledgers, but we consider it as the one account.

Q. You consider it as one account? A. That is right.

Mr. Fennelly: I object to what they consider it.

The Court: I will allow it.

Q. What is the number of Mr. Costello's account? A. No. 10151—10151.

Q. And Mrs. Costello's account? A. 10151-1/2.

Q. Do these ledger cards reflect all of the payments and credits by both Mr. and Mrs. Costello? A. They do.

Q. May I have them, sir? A. (Hands papers).

(Marked Government's Exhibit 334-A for identification.)

Mr. Christy: May the record note that Government's (1564) Exhibit 334-A consists of 3 cards?

Q. Mr. McCaffery, I show you Government's Exhibit 334-A consisting of 3 cards. Are those the cards kept for the

purchases and payments and credits of Frank Costello and Mrs. Loretta Costello? A. They are.

Q. Do they cover the period from 1942 through 1949? A. They do.

Q. And those are records kept by Sulka in the regular course of its business, is that correct? A. That is correct.

Mr. Christy: Your Honor, the Government offers Government's Exhibit 334-A and restricts the offer to that part of it covering the years 1942 through 1949—1940 through 1949.

The Court: I thought it only covered from 1942.

Mr. Christy: May I refer it to the witness again?

The Court: What period does that cover?

Q. In fact, it goes back to 1940, does it not? A. The first posting on the ledger is January 10, 1940.

The Court: '40, all right.

Is there any duplication here?

Mr. Christy: I beg your pardon?

(1565) The Court: Is there some duplication here?

Mr. Christy: Duplication?

The Court: Yes. I understood your previous offer was 334 which shows various orders from July, 1942, to July, 1949.

Mr. Christy: There is some duplication, your Honor.

The Court: I see.

(A pause.)

Mr. Fennelly: I object to the card pertaining to Mrs. Costello's account as irrelevant and immaterial, and as to the card in the name of Mr. Costello, to this notation on the top (handing to the Court)?

The Court: Have you anything to say about that?

Mr. Christy: May I see it, your Honor?

The Government has no objection and it will block that out, your Honor, if we may substitute appropriately blocked-out photostats.

The Court: The objections are overruled and they may be received.

(Government's Exhibit 334-A for identification received in evidence.)

Q. Now, referring to Government's Exhibit 334 consisting of order sheets, this first one for shirts, the second one for shirts, and the third and fourth (1566) one for a coat, and the fifth one for shirts, and the sixth one for shirts, seventh one for shirts, were all on the account of Frank Costello, is that correct?

Mr. Fennelly: I can't hear the question.

Mr. Christy: Were all on the account of Frank Costello.

Mr. Fennelly: Of what?

Mr. Christy: The order blanks referred to here.

Q. Is that correct? A. May I answer it, sir?

Q. Yes. A. When you mention "coat," I just want to say that is a shirt, that is not a coat.

Yes, that is correct, they are all on the ledger of Mr. Costello.

The Court: That doesn't—

The Witness: I beg your pardon.

The Court: Just a minute. You have now, Mr. Christy, in your hand a group of pages which are part of 334 for identification.

Mr. Christy: I will read the numbers off on them.

The Court: What?

Mr. Christy: I will read the numbers off.

The Court: All right. Just get your record straight. And of those, the witness has said that they all represent items that were charged to Frank (1567) Costello. Is that right?

Mr. Christy: Yes. I will read the numbers. 38179, 382—

Mr. Fennelly: Can we have the date of them?

Mr. Christy: The date will be on the exhibit, your Honor. Do you want me to read the date off also?

The Court: Well, it might help Mr. Fennelly to make his notes as you go along.

Mr. Christy: July 1, 1942, No. 38179. July 10, 1942, 38276. December 30, 1942, 1154. March 3, 1943, 2155. April 29, 1943, 3320. June 10, 1943, 4140.

Mr. Fennelly: Those are Mr. Costello's?

Mr. Christy: Yes.

Q. Now, on the one dated November 28, 1949, 40112, that is—

The Court: Keep your voice up, Mr. Christy; please.

Q. The French model pajamas at $72.50, that is on account 1015[1]½, is it not? A. That is correct, sir.

The Court: That is the account that is in Mrs. Costello's name?

The Witness: That is correct, your Honor.

Mr. Fennelly: Mrs. account.

(1568) The Court: Mrs. Costello's.

The Witness: That is correct, sir.

John T. McCaffery—for Government—Direct.

Q. And the balance of these, which consist of November 20, 1944, No. 13338, December 7, 1942, order No. 632 and November 23, 1946, order 25300? A. Yes.

Q. And November 28, 1949, order 40111 and September 7th— A. 40111, yes.

Q. September 7, 1944, 11625, are they all on Mrs. Costello's account? A. No, you have—You have to read that because—

The Court: Keep your voice up.

The Witness: I beg your pardon.

The Court: I wish everybody would speak up loud enough so that I can hear it.

The Witness: I am sorry, sir.

The Court: All right. The tendency is to talk low when you are talking to somebody alongside of you. You see it is important that the last juror hear, and Mr. Fennelly has more than a passing interest in it also, being the attorney for the defendant on trial.

Mr. Fennelly: (To Mr. Christy) I wish you would leave those segregated, if you would, and—

Q. I refer you to order dated November 28, 1949, order 40111, does it have Mrs. Costello's account number in the upper left-hand corner on this exhibit? (1569) A. Yes, it does.

Q. And one dated November 28, 1949, 40112, also has Mrs. Costello's account number? A. Yes, it does.

Q. Now, order No. 25300, November 23, 1946, is on whose account? A. It is on Mr. .

Q. And September 7, 1944, order No. 11625 is on whose account? A. Mr.

Q. Order No. 13338, November 20, 1944, and No. 632 December 7, 1942, are both on the account of Mrs. Costello, is that correct? A. That is correct, sir.

John T. McCaffery—for Government—Direct

Q. I refer you once again to November 28, 1949, account 40112 for the order of pajamas; they were charged to Mrs. Costello but made for Mr. Costello, is that correct?

The Court: Now, look, we pushed those pajamas around so that they are all wrinkled. $75 was spent for something, and the only point is whether it was spent by somebody who is on trial here. That is the whole thing. Now, let us get along.

A. Yes, that is correct, sir.

Q. Now, Mr. McCaffery, have you broken down the figures on the two ledgers as to payments? A. Yes, I have, sir.

(1570) Q. And referring to the account of Frank Costello, will you tell us how much was spent in the year 1940? A. In the year 1940 the total is $21.17.

Q. In 1942? A. $148.72.

Q. 1943? A. $115.14.

Q. 1944? A. $81.76.

Q. 1946? A. $50.

Q. 1947? A. $133.27.

Q. 1949? A. $67.32.

Q. Now, on the ledger card for Mrs. Costello, does that show a payment in 1942 of $133.85? A. It shows total payments in 1942 is $133.85.

Q. And the total payment in 1944?

The Court: You mean total payment on that account?

The Witness: Yes, sir. In other words—pardon me, sir; he asked does it show payment of $133.85.

The Court: The total of all payments.

The Witness: That is correct, sir.

The Court: What is it? 133—what?

The Witness: $133.85.

John T. McCaffery—for Government—Cross

Q. And in 1944, $90? A. That is correct.
Q. 1948, $91.80? A. $91.80, that is right.
Q. 1949, $394.36? A. That is correct.

Mr. Delaney: What is the last figure?
(1571) Mr. Christy: $394.36.
No further questions, your Honor.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the grand jury that returned the indictment in this case? A. No, I didn't, sir.

Q. Now, can I have these bills that were Mrs. Costello's, the orders? A. I can identify them for you easily, sir. The 10151, that would be Mr.

Q. If you would just segregate for me— A. I will be happy to do that, sir.

Q. If you would, those that belong to Mrs. A. Surely, I will be glad to, sir. These are Mrs. here, sir (indicating); these are Mr. (indicating).

The Court: Well, we will take this up after lunch, Mr. Fennelly.

Now, ladies and gentlemen, we are off until 2.15, but remember the instruction I have been giving you about talking about the case among yourselves or with anybody else, don't do that and don't pay any attention to any stories that you might see in the newspapers or hear through any other or learn through any other means of communication other than what you hear from the witnesses.

(Recess until 2.15 p.m.)

John T. McCaffery for Government Cross

(1572) AFTERNOON SESSION

(Jury present.)

JOHN T. McCAFFERY resumed.

Cross Examination by Mr. Fennelly (Continued):

Mr. Fennelly: May I have the pajama exhibits?

Q. Now, this pair of pajamas which the prosecutor referred to in his opening and which he lays so much stress upon, they were a Christmas present, weren't they? A. That is correct, sir.

Q. From Mrs. Costello to her husband? A. That is correct, sir.

Q. And do you find it very unusual for a couple married some 30 years that a wife should give a rather nice present of a pair of pajamas to her husband? A. No, I do not, sir.

Q. And also this bill here, No. 40111? A. Yes, sir.

Q. That was also a Christmas gift to Mr. Philip Kastel? A. That is correct, sir.

Q. They were the same kind of pajamas too, weren't they? A. That is correct, sir.

Q. This other order, 632, that was in the Christmas season too, was it not? A. That is correct, sir.

(1573) Q. That is order 632. And then this order for Mr. Costello, which is dated November 23, 1946, that was marked for Christmas too, wasn't it? A. Yes, it is marked for Christmas, sir.

Mr. Fennelly: That is all.

Mr. Christy: No further questions.

May we substitute photostats, sir, at a later date?

The Court: Surely.

Mr. Christy: Here are the cards (handing).

Thank you, Mr. McCaffery.

The Witness: You are welcome.

Good day, sir.

(Witness excused.)

Mr. Christy: The Government calls Edwin S. Greenbaum.

EDWARD S. GREENBAUM, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Greenbaum, where do you live? A. Princeton, New Jersey.

Q. Are you a partner in the law firm of Greenbaum, Wolff & Ernst? A. I am.

(1574) Q. How long have you been with that firm, sir? A. Nearly 40 years. Since it was started.

(Marked Government's Exhibits 335 and 335-A for identification.)

Q. Mr. Greenbaum, I show you Government's Exhibit 335 for identification, a letter, and ask you if you recognize the signature? A. I do.

Q. Whose signature is that, sir? A. My brother Lawrence.

Q. That is, Lawrence S. Greenbaum? A. That is right.

Q. Mr. Greenbaum, I show you Government's Exhibit 335-A for identification, the last page, the last signature there, and ask you if you recognize that signature? A.

That is a photostat, not the original. It is a photostat of my brother Lawrence's signature.

Q. That is his signature there? A. It looks like it, yes.

Q. Lawrence S. Greenbaum? A. Yes.

Q. Same signature on this letter Government's Exhibit 335? A. When you say the same signature—

Q. Signed by the same person? A. Yes.

Mr. Christy: The Government offers Government's Exhibits 335 and 335-A for identification in evidence.

(1575) Q. Your brother Lawrence, sir, is no longer living, is he? A. No. He died last 1941—1951, August 28th.

Mr. Fennelly: I object to 335 for identification, on the ground that it is incompetent, and as to 335-A that it is irrelevant and immaterial.

The Court: The objection to 335 is sustained.

Mr. MacMahon: Your Honor, you have to consider it, may I submit, with the other exhibit.

The Court: Maybe that is so. I withdraw the ruling until I look at 335-A.

Mr. Fennelly: I might point out to your Honor in addition that you will notice that power of attorney refers to certain years, while the letter refers to subsequent years.

Mr. MacMahon: Your Honor, may I be heard on that?

The Court: Yes.

Mr. MacMahon: The power of attorney, if you will note, expressly is not limited to those years, by express terms.

The Court: I shall hear you further on 335, Mr. Fennelly.

Mr. Fennelly: I also believe the power would not cover the letter, under its terms.

(1576) The Court: I am inclined to agree with that.

Mr. MacMahon: Your Honor, I submit the letter was written strictly under that power, for the very purpose of that power, to the very person to whom that power runs, by the person to whom it runs, and for the purpose of the power.

The Court: Well, that may be so. It certainly isn't clear to me now that that is so.

Mr. MacMahon: Your Honor, it is a power to make representations to the Bureau of Internal Revenue.

The Court: That may very well be, but I say I am not sure that that is so. I will think about it. At the moment I will sustain the objection, rather, I will withhold the ruling. The power of attorney I will receive; as far as the materiality and relevance is concerned I don't think it is important, I would receive that, but otherwise, 335 I would like to think about. I am not at all sure, and I do not suggest that you are wrong and that I am inevitably right, but it is not at all clear to me that the power is as broad as you suggest or, at any rate, that it is broad enough to authorize the letter, which is 335.

Mr. MacMahon: Your Honor, do I gather that you want further argument at this time, or at some later time in the absence of the jury?

(1577) The Court: No, I don't think there is any sense taking up any more time with the jury here, but I may ask for further argument on it later, before I decide.

Mr. MacMahon: All right, your Honor.

The Court: If you have any law on it you may submit it to me, if you wish.

Mr. MacMahon: Yes, your Honor.

The Clerk: As I understand, Government's Exhibit 335-A is being received.

The Court: 335-A is received.

(Government's Exhibit 335-A for identification received in evidence.)

Q. Mr. Greenbaum, has your firm ever performed services for the defendant Frank Costello? A. We have.

Q. And in the course of your business do you keep a record of the payments for services and the disbursements on the account of a client? A. Yes, we do.

Q. And do you enter those items on fee cards? A. Well, they are entered on cash receipt books and on ledgers, and then they are posted on clients' fee cards.

Q. And the fee cards show the dates of payment and the amounts of payments, is that correct, sir? (1578) A. Payment by the client, receipt by us, that is right.

Q. Those fee cards are records kept by your firm in the regular course of its business? A. That is right.

Q. It is the regular course of your firm's business to keep such cards? A. Yes, that is among the things we do.

Q. Do you have those fee cards with you, sir? A. Yes, I have.

(Marked Government's Exhibit 336 for identification.)

Q. Mr. Greenbaum, I show you Government's Exhibit 336 for identification and I ask you if that is a photostat, or if those are photostats, six photostats in all, if those are photostats of the fee cards kept by your firm for the

account of Frank Costello on which are blocked out all items except the dates and amounts of payment? A. Receipts.

Q. Receipts. A. That is right, Mr. Christy, they are.

Q. And do they cover the period 1939 through 1947, sir? A. Yes.

Q. These payments on here are for legal services rendered by your firm and also include disbursements, is (1579) that correct? A. Yes. There are two items, disbursements received as indicated, and the others are for legal services, fees.

Mr. Christy: Your Honor, the Government offers Government's Exhibit 336 for identification in evidence.

The Court: May I see 335, please, 335 for identification?

Mr. Fennelly: No objection.

(Government's Exhibit 336 for identification received in evidence.)

Q. Mr. Greenbaum, I ask you, from Government's Exhibit 336 in evidence if you can tell me the total payments by Frank Costello to your firm in the year 1939 amounted to $11,000? A. Plus disbursements—yes, $11,000.

Q. 11,000. And the payment to your firm by Frank Costello in 1940 amounted to $10,000 plus $650 disbursements, is that correct? A. That is correct.

Q. That would be $10,650? A. That is right, Mr. Christy.

Q. And the fees paid to you in 1941 in the amount of $4,000? A. That is right.

Q. And in the year 1944, $5,000? A. Yes.

(1580) Q. And in the year 1946, $10,000? A. That is right.

Edward S. Greenbaum—for Government—Cross

Q. And in the year 1947, $15,000? A. That is right.

Mr. Christy: I have no further questions, your Honor.

Cross Examination by Mr. Fennelly:

Q. General Greenbaum, you didn't testify before the grand jury that returned the indictment in this case, did you? A. I did not.

Q. And these fees were in payment for services in connection with business matters of Mr. Costello, were they not?

Mr. MacMahon: Your Honor—

A. Yes.

Q. And I see one item on here of some $7,867.50, June 28, 1946. Was that a payment to the Collector of Internal Revenue for taxes for Mr. Costello? A. Yes, it was.

The Court: What was that question?

(Question and answer read.)

The Witness: May I clarify that? The amount you mentioned was the amount we received for disbursement, of which; about a dollar difference; $7,874.18 we disbursed for Mr. Costello to the Collector of Internal (1581) Revenue on June 28, 1946, by check.

Q. And among the matters that your firm handled was an income tax case involving Mr. Costello's taxes for 1936 and '37, was there not, in the Tax Court? A. I see that some of these services were for tax matters for

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Supreme Court of the United States

OCTOBER TERM, 1955

No. 72

FRANK COSTELLO, PETITIONER,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED MAY 12, 1955
CERTIORARI GRANTED OCTOBER 10, 1955

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